HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Civil Suit No. 45 of 1999

Judgment reserved on 14.7.2006

Date of decision : 11.8.2006

The H.P. State Industrial Development Corporation Ltd. Shimla

……. Plaintiff.

Versus

M/S Gobind Pharm Chem Pvt. Ltd. and others ….. Defendants

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge

Whether approved for reporting?

For the plaintiff : Mr. Balwant Kukreja, Advocate.

For the defendants: Mr.Bhupender Gupta, Senior Advocate, with Janesh Gupta, Advocate, for defendants No. 1 and 2.
Mr. R.L. Sood, Sr. Advocate, with Mr. Vikas Rajput, Advocate, for defendant No. 4.
Mr. Ashwani Kumar Sharma, Advocate, for Defendant No. 6.

Surjit Singh, Judge

The Himachal Pradesh State Industrial Development Corporation Limited, a Company incorporated under the Companies Act 1956, has filed the present suit through its Senior Manager (Project) Shri Vinayaka Kahol against defendants No. 1 to 4 for recovery of a sum of Rs.1,43,49,345/-.

2. Cause of action, as disclosed in the plaint, may be summed up thus. One of the functions of the plaintiff – Corporation is to provide

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Whether reporters of Local Papers may be allowed to see the Judgment?

financial assistance to industrial units. Defendant No. 1, which is a private limited company, applied to the plaintiff for grant of term loan of Rs.49.5 lacs for construction of a building, purchase of land, plant and machinery for setting up a factory of manufacturing of basic drugs at Baddi, District Solan. Term loan of Rs.45.5 lacs was sanctioned on 30.5.1992 and the remaining amount of Rs. 4 lacs on 8.4.1993. Loan documents were executed by defendant No. 1 through its Directors, impleaded as defendants No. 2 to 4. The documents included loan agreements and hypothecation agreements in respect of both the loans, i.e. one amounting to Rs. 45.5 lacs and the other amounting to Rs. 4 lacs. One set of the documents in respect of the loan of Rs. 45.5 lacs was executed on 5.8.1992 and the other in respect of the loan of Rs. 4 lacs on 11.4.1994. Equitable mortgage, in respect of the properties of defendant No. 1, was also created in favour of the plaintiff by deposit of title deeds of the said property with proforma defendant No. 5. It has, however, not been explained why mortgage was created by deposit of title deeds with proforma defendant No. 5 instead of the same being deposited with defendant No. 1. Defendants No. 2 to 4 guaranteed the repayment of the loan and interest by executing guarantee deeds. Their liability, as per terms of the guarantee deeds, was to be joint and several and co-extensive with that of defendant No. 1. The guarantee was a continuing one. As per loan documents, the principal amount, together with interest at the agreed rate, i.e. 19% per annum with half yearly rests, was payable in half yearly instalments. The first instalment was payable on 10.2.1995 and the last one on 10.8.2002. The defendants did not stick to the repayment schedule. On 29.1.1996 defendants No. 1 to 4 submitted a

proposal to the Corporation regarding arrangement of repayment of the loan money. It was proposed that the factory be leased out to M/s Panacea Bio Tech Ltd., New Delhi, who will repay the loan. The plaintiff Corporation and proforma defendant No. 5 discussed the matter with defendant No. 1 and it was made clear to defendant No. 1 by the plaintiff and defendant No. 5 that no more time could be given to the promoters / new party (sic) for clearance of the loan. After further deliberations, defendant No. 1 agreed to pay Rs.10 lacs to the plaintiff and proforma defendant No. 5, out of which Rs.4.5 lacs were paid to the plaintiff and the remaining amount to the proforma defendant No. 5. The plaintiff came to know about the handing over of the industrial unit by defendant No. 1 to M/s Panacea Bio Tech Ltd. on 5.6.1996, when a news item appeared in the Indian Express (Chandigarh edition) that a fire had broken out in the industrial unit of defendant No. 1. Defendant No. 1 filed an insurance claim with M/s. National Insurance Company (proforma defendant No. 6) for a sum of Rs.80.86 lacs. A power of attorney was executed in favour of the plaintiff by defendant No. 1 to receive the insurance claim from proforma defendant No. 6. When nothing was paid to the plaintiff by defendants No. 1 to 4, a notice was issued to them on 23.1.1999. By then a sum of Rs.1,29,04,183/- had become due to the plaintiff on account of addition of interest amount to the principal amount. Defendants did not clear their liability despite service of notice. The plaintiff, therefore, filed the present suit claiming a sum of Rs.1,43,49,345/-, which was outstanding as on 10.2.1999. Future interest at the rate of 19% per annum has also been claimed. Cause of action is stated to have accrued on 23.1.1999, when the legal notice was served. The suit is alleged to be within time by virtue of the provision of Section 15 (sic) of the Limitation Act, 1963.

3. Common written statement has been filed on behalf of defendants No. 1 and 2. Defendant No. 4 has filed a separate written statement. Defendant No. 3 has not filed any written statement. Proforma defendant No. 6, the Insurance Company, with which insurance claim has been lodged by defendant No. 1, on account of loss by fire, has also filed written statement.

4. Defendants No. 1 and 2 in their written statement have stated that the suit has not been filed by a competent person. The plaintiff is alleged to be estopped to file the suit on account of the acts and deeds of its servants. Plea of limitation has also been raised. The plaint is alleged to lack full and material particulars. It is also alleged that the Senior Manager (Project) Shri Vinayaka Kahol, who has filed the suit on behalf of the plaintiff, is not authorized to do so. It is not denied that defendants No. 1 to 4 had been sanctioned term loans of Rs. 45.5 lacs and Rs. 4 lacs, but it is alleged that timely financial assistance was not provided by the plaintiff to the defendants as a result of which it sustained financial losses. It has been denied that interest was agreed to be paid on the loan amount at the rate of 19% per annum. It is alleged that signatures of the defendants were obtained on various printed formats the blank portions whereof were unfilled. It may be stated that the documents are in the nature of printed forms and some blank portions are filled in by type-writing. The dates mentioned in the documents are also alleged to be not correct. It is alleged that the documents were not executed on the dates on which the same purport to have been executed. It has been denied that any equitable mortgage of the property of the defendants was created in favour of the plaintiff. It has also been denied that defendants No. 2 to 4 guaranteed repayment of loan or executed the guarantee deeds. Further it

is alleged that defendant No. 1 had taken financial assistance for setting up the factory not only from the plaintiff but also from defendant No. 5 and that without obtaining the consent of proforma defendant No. 5, the plaintiff cannot seek the recovery of money by the process of Court. It has been denied that the proposal of defendants No. 1 to 4 for leasing out the factory to M/s Panacea Bio Tech Ltd. had been opposed by the plaintiff and proforma defendant No. 5. On the contrary, it is alleged that their proposal had been approved and it was thereafter that the factory was leased out to M/s Panacea Bio Tech Ltd. Plaintiff's allegation that it came to know about the leasing out of the factory to M/s Panacea Bio Tech Ltd. only when a news item appeared in the Indian Express about the fire incident is also denied. Further it is alleged that after the occurrence of fire incident, the plaintiff was approached to lodge the insurance claim, because the factory had been leased out to said M/s Panacea Bio Tech Ltd. with its approval, but the plaintiff suggested that since M/s. Panacea Bio Tech Ltd. had not executed any valid documents in favour of the plaintiff, it could not lawfully lodge the insurance claim and that only defendant No. 1 was competent to lodge the claim and it was thereafter that defendant No. 1 lodged the claim with the Insurance Company. Further it is alleged that the plaintiff delayed the matter of transfer of liability from defendant No. 1 to M/s Panacea Bio Tech Ltd. and, therefore, it is estopped to file the suit against defendants No. 1 to 4. It is also alleged that plaintiff appears to have not pursued the matter regarding insurance claim against the Insurance Company and for this reason also it is estopped to file the suit. It is further alleged that the defendants have come to know that the plaintiff has sold the assets of the company at a throw-away price, without associating them (the defendants). Statement of

accounts submitted with the plaint is stated to be incorrect as it contains many unauthorized entries on debit side. It is alleged that the defendants are not liable to pay the amounts of these unauthorized entries. It is also alleged that on account of various acts of omission and commission, negligence and inaction on the part of the officials of the plaintiff, the factory set up by the defendants, could not be operated successfully and it had to be closed down, which has resulted in financial losses to the tune of Rs.1,50,00,000/- and this amount of loan is required to be adjusted against the claim set up by the plaintiff.

5. Defendant No. 4 in his separate written statement has also raised the preliminary objections that the suit is not filed by an authorized and competent person, it is barred by limitation, the plaintiff is estopped by the acts, deeds, conduct, delay and latches etc. of its servants to file the suit and that the suit is not maintainable, which are similar to the preliminary objections raised by defendants No. 1 and 2. Additional preliminary objections, raised by him, are that (i) the plaintiff failed to sell the hypothecated goods and to realize the money due and, therefore, the suit is not maintainable; (ii) the amount due has not been correctly worked out, because the plaintiff could not have charged interest at a rate higher than 6% simple interest per annum on the loan amount; (iii) there has been variation of terms of the agreement between the plaintiff and defendant No. 1 to which defendant No. 4 was not a party and hence the defendant No. 4 stands absolved of the liability, if any; (iv) defendant No. 4 resigned from the Directorship of defendant No. 1 with the consent and knowledge of the plaintiff and hence he is not liable; (v) the suit is bad for non-joinder of M/s. Panacea Bio Tech Ltd.; and (vi) the Court does not have the jurisdiction in the matter.

6. On merits it has been denied that the interest was agreed to be paid at the rate of 19% per annum with half yearly rests. It is alleged that the plaintiff cannot charge interest at a rate higher than 6% simple interest per annum. It has been alleged that it was with the consent of the plaintiff and proforma defendant No. 5 that the factory of defendant No. 1 was handed over to M/s Panacea Bio Tech Ltd. on lease basis and that when the factory was with said M/s Panacea Bio Tech Ltd., a fire broke out therein and insurance claim was lodged with proforma defendant No. 6 and until that claim is settled, the plaintiff cannot enforce its claim by filing a suit. It has been denied that demand notice was received.

7. Proforma defendant No. 6 in its written statement has raised a number of preliminary objections. It is alleged that (i) the plaint is liable to be rejected as self-contradictory averments have been made therein with regard to the liability of different sets of the defendants, (ii) proforma defendant No. 6 cannot be sued through its Branch Manager, (iii) there is no privity of contract between the plaintiff and proforma defendant No. 6, (iv) the suit is bad for mis-joinder of proforma defendant No. 6, (v) the suit is barred by time, (vi) defendant No. 1 has filed a complaint with the National Consumer Disputes Redressal Commission at New Delhi in respect of the insurance claim and hence the suit against defendant No. 6 is not competent, and (vii) the suit is bad for mis-joinder of causes of action. On merits it is alleged that proforma defendant No. 6 had no knowledge of leasing out of the property by defendant No. 1 to M/s Panacea Bio Tech Ltd. and that as a matter of fact the insurance policy had been purchased for the period from 10.3.1996 to 9.3.197 insuring the building, plant, machinery and other assets by defendant No. 1. Further it is alleged that the incident of fire was also reported by defendant No. 1

vide letter dated 15.6.1996 and not by M/s Panacea Bio Tech Ltd. or the plaintiff. Then the details how the claim for insurance money submitted by defendant No. 1 had been dealt with, are given, which it is not necessary to notice for determining the issues involved in the present case.

8. In the replications the plaintiff has re-affirmed the averments made in the plaint and denied those made in the written statements. It has been specifically denied that the plaintiff had accepted or approved the proposal of defendant No. 1 for handing over the factory to M/s Panacea Bio Tech Ltd. on lease basis and for passing on the liability to said M/s Panacea Bio Tech Ltd. It has also been denied that the plaintiff had undertaken to pursue the insurance claim with proforma defendant No. 6.

9. On the pleadings of the parties, following issues were framed, vide order dated 30.5.2001:-

> ”1. Whether the suit is not maintainable, as alleged? OPD
> 2. Whether the plaintiff is estopped by its own acts and conduct from filing the present suit? OPD
> 3. Whether the suit is bad for mis-joinder of parties? OPD No. 6.
> 4. Whether the suit is barred by time? OPD
> 5. Whether the plaint lacks necessary and material particulars as alleged? If so, to what effect? OPD
> 6. Whether the suit is bad for mis-joinder of causes of action? OPD No. 6.
> 7. To what amount, if any, is the plaintiff entitled to and if so, from whom and to what extent? OPP
> 8. Relief.”

10. Before proceeding to record findings on the aforesaid issues, to be fair to the defendants, it is desirable to take notice of the arguments advanced by their counsel during the course of final hearing that the suit having not been filed by a person, authorized by the plaintiff, the same

deserves dismissal on this score alone. It is true that defendant No. 4 specifically pleaded, vide preliminary objection No. 1, that the suit had not been filed by a duly authorized and competent person and hence it was liable to be dismissed on this ground alone, yet no issue was framed specifically covering this plea. Learned counsel for defendant No. 4 submitted that issue No. 1 regarding maintainability of the suit could be said to cover the plea. Issue No. 1 appears to have been framed on a preliminary objection, raised by defendants No. 1 and 2 in their written statement, that the suit is not maintainable in the form in which it has been laid. Even though a specific issue is not framed with regard to this plea, yet the evidence, having been led by the parties concerning this plea, I proceed to determine the same.

11. PW-1 Vinayak Kahol, who has signed and verified the plaint on behalf of the plaintiff, has testified that he is authorized, vide resolution dated 18.6.1997, copy Ext. PW-1/A, to file the suit on behalf of the plaintiff – Corporation. Through this resolution all Senior Managers have been authorized to file suit on behalf of the plaintiff with the prior approval of the Managing Director of the plaintiff Corporation. No doubt the witness has not stated in the examination-in-chief itself that he had taken prior approval of the Managing Director of the plaintiff Corporation, but in the course of cross-examination by defendant No. 4, he categorically stated that he had taken prior approval of the Managing Director. No evidence in rebuttal has been led by the defendants. The testimony of PW-1 and the resolution, copy Ext. PW-1/A, disprove the plea that the suit is not filed by a duly authorized person. In any case, the Hon'ble Supreme Court in **United Bank of India vs. Naresh Kumar and others,** [(1996) 6 SCC 660] has held that claims of public institutions pertaining to recovery of money,

cannot be dismissed on technical grounds. It has been held that from a combined reading of Order 6 Rule 14 and Order 29 Rule 1, it appears that even in the absence of any formal letter of authority or power of attorney having been executed, a person, referred to in Rule 1 of Order 29, can by virtue of the office, which he holds, sign and verify the pleadings on behalf of the Corporation.

12. As a result of the above discussion, the objection that the suit is not filed by a duly authorized and competent person, is overruled.

Findings on the issues formally framed.

Issue No. 1.

13. It has not been explained in the written statement as to what defect is there in the form of the suit nor has any evidence been led to show how the suit is not maintainable or that there is any defect in the form of the suit. Therefore, the issue is answered against the defendants.

Issue No. 2.

14. Plea of estoppel is based on three counts, namely (a) the loan amount was not released on time and was also released in instalments due to which the defendants' industrial unit could not come in production at once and suffered huge losses; (b) the factory was transferred to M/s Panacea Bio Tech Ltd. with the consent and approval of the plaintiff and proforma defendant No. 5, but it delayed the completion of the papers regarding transfer of liability of the defendants to M/s Panacea Bio Tech Ltd.; (c) the defendants executed a power of attorney in favour of the plaintiff to pursue the insurance claim, but it did not pursue that claim effectively as a result of which it is still unsettled.

15. As regards plea (a) above, there is no evidence worth the name. Defendant No. 2, who appeared in the witness box as DW-2, stated

that delay was caused by the plaintiff Corporation in the matter of rehabilitation of defendants' unit. Admitted case of the parties is that the loan was sanctioned on 30.5.1992 and thereafter documents, i.e. loan agreements, hypothecation deeds etc., were executed by the defendants on 5.8.1992 and immediately a sum of Rs.45.5 lacs was released in their favour and the remaining amount of Rs. 4 lacs was released in April 1993, when they executed the documents for this amount of money. No evidence has been led by the defendants that any delay in the release of loan amount had taken place after the loan was sanctioned on 30.5.1992. In the circumstances, it cannot be said that any delay had taken place in the release of the sanctioned loan amount.

16. Coming to plea (b) above, there is absolutely no evidence, except the bald statement of DW-2 (defendant No. 2) that the plaintiff had agreed to the proposal for the leasing out of the industrial unit to M/s Panacea Bio Tech Ltd. In the cross-examination, he has stated that he was possessed of the documents regarding the approval accorded by the plaintiff for leasing the unit to M/s Panacea Bio Tech Ltd. However, no such documents have been produced. Therefore, the defendants are liable to an adverse inference (on account of the non-production of the alleged documents) that the plaintiff had not approved the lease of the defendants' industrial unit to M/s Panacea Bio Tech Ltd.

17. As regards plea (c) DW-2 has testified that the plaintiff had obtained power of attorney for pursuing the insurance claim but it did not pursue it with the result that no compensation has been awarded by the National Consumer Disputes Redressal Commission so far in the case instituted against the Insurance Company. He has tendered in evidence Ext. DA the power of attorney. A reading of the document shows that the

witness himself had filed the complaint before the National Consumer Disputes Redressal Commission. The plaintiff has been authorized to make applications etc. to the Commission as and when required and to receive the compensation money awarded by the Commission for adjustment against the liability of the defendants. There is no evidence that the plaintiff was required to make any application or to take some other steps for further progress in the case pending before the National Consumer Disputes Redressal Commission, but it did not do so and because of that the matter has remained undecided.

18. As a result of the above stated position, the issue has been answered against the defendants.

Issue No. 3.

19. No relief has been claimed in the present suit against defendant No. 6. This defendant has been impleaded as a proforma defendant, because the factory, in question, was insured with it against loss by fire and the insurance claim having been repudiated by it, a complaint has been filed against it, which is still pending. For the foregoing reasons, it is held that defendant No. 6 is just a proper party and not a necessary party. It being a proper party, the suit cannot be said to be bad for its mis-joinder.

Issue No. 4.

20. While addressing arguments on this issue, learned counsel representing defendants No. 1 and 2 and defendant No. 4 submitted that the first instalment of the loan was due on 10.2.1995, next on 10.8.1995, next on 10.2.1996, next on 10.8.1996 and the remaining after every six months upto 10.8.2002. It was urged that the suit had been filed more than three years after the due dates for the payment of instalments of

10.2.1995, 10.8.1995 and 10.2.1996, the amount of which comes to Rs. 8 lacs. The suit was filed on 22.4.1999. They further submitted that as regards the instalments due on 10.8.1999 and thereafter the suit was premature as the payment of such instalments had not become due upto the date of the institution of the suit.

21. Both the submissions of the learned counsel for the defendants are without merit. Clause 2 of part I of the loan agreements Exts. PW-3/A & PW-3/B, bearing the heading 'Interpretation', defines the term 'period of default'. The clause is reproduced for ready reference:-

"Period of Default 2. 'Period of Default' means in respect of:

(i) The first instalment of principal the period commencing from its due date and ending with the date of payment thereof:

(ii) The first payment of interest the period commencing from the date from which the interest accrues and ending with the date of payment thereof"

(iii) A subsequent instalment of principal – the period commencing from the date immediately succeeding the date on which the last instalment of principal was paid or due date is which the last payment relates, whichever date is later, and ending with the date on which the interest due has been paid.

(iv) A subsequent payment of interest – period commencing from the date immediately succeeding the date on which the last payment of interest was made or the due date to which the payment of interest relates, whichever date is later, and ending with the date on which the interest due has been paid."

22. From a bare reading of this clause, it is clear that the ‘period of default’ of first instalment commences on the date on which the instalment is due and ends with the date on which the payment is made, meaning thereby that it continues till the payment of the said instalment is made. As regards the subsequent instalments, the period of default commences on the date immediately succeeding the date of the payment of the last instalment of principal or due date of such subsequent instalment, whichever date is later and ends with the date on which the interest due has been paid, meaning thereby that this period continues util the entire amount of interest due is cleared.

23. Admittedly in this case the defendants did not even pay the first instalment. In fact they did not pay any amount of money towards the discharge of their liability for the principal amount or the interest that had been accruing thereon, except an amount of Rs.4.5 lacs on 10.2.1996, which was adjusted towards the liability for interest. Thus, the ‘period of default’, even in respect of the first instalment continued till re-call notice dated 23.1.1999 was issued. The copy of this notice is available at pages 166 and 167 of the documents and the defendants admitted the receipt of this notice at the time of admission / denial of the documents.

24. Clause 5 of Part-VIII of the loan agreements Ext. PW-3/A and PW-3/B says that if a default occurs in the payment of principal or interest or any other payment, required under this agreement, the plaintiff may at its option by notice in writing declare the principal of the loan amount, then outstanding, to be due and payable immediately and upon such declaration the principal and interest and other amounts due, shall become payable immediately.

25. As stated here-in-above, the 'period of default' in respect of the very first instalment was continuing, when the re-call notice dated 23.1.1999 was issued.

26. Clause 5 of Part-VIII of the agreements Exts. PW-3/A and PW-3/B has been the subject of consideration by two different Single Benches of this Court in two separate cases, instituted by the plaintiff. The first such case is **H.P. State Industrial Development Corporation vs. M/s. Form Techniks (India) Pvt. Ltd. and others,** [2001 (3) Shim.L.C. 204]. In this case the Court observed that the clause gives a discretion to the plaintiff either to enforce the payment of the amount in respect of which default has been committed or by a notice in writing re-call the entire amount of loan and enforce its immediate payment and that if a notice of re-call is given, suit can be filed within three years of the date of the re-call notice.

27. The second case is **H.P. State Industrial Development Corpn. Ltd. vs. Kesri Roller Flour Mills and others,** (AIR 2002 H.P. 34). In this case it has been held that under this clause the plaintiff has the option to declare the principal, due at the time of default, to be payable immediately by serving a notice in writing and on such declaration, the principal amount then payable, the interest and all other moneys payable under the agreement, would become due and payable immediately and that the cause of action accrues to the plaintiff to institute the suit on the date of the notice.

28. These two precedents negate the submissions made by the learned counsel for the defendants. Consequently the issue is found against the defendants.

Issue No. 5.

29. It has not been explained as to what particulars are lacking in the plaint. So the issue is decided against the defendants.

Issue No. 6.

30. As already noticed in discussion under Issue No. 3, no relief has been claimed against defendant No. 6. So the suit cannot be said to be bad for mis-joinder of causes of action. Issue is answered accordingly.

Issue No. 7

31 It is not denied by defendants No. 1 to 4 that they had taken loan of Rs. 49.5 lacs from the plaintiff and that only a sum of Rs. 4.5 lacs towards the discharge of their liability for the principal amount / interest accrued thereon, has been paid back so far. Their contention is that the rate of interest was not 19% per annum with six monthly rests, as alleged, but it was only 6% simple interest per annum. It is alleged that the signatures of the defendants had been obtained on printed formats of various loan documents, when their blank portions were unfilled and that the blank space regarding rate of interest had been filled in subsequent to the signing of the documents by them.

32. There is no evidence in support of this plea of the defendants, except the bald statement of defendant No. 4, who appeared as D4W-1. Defendant No. 2, who appeared as DW-2, did not say even a word about this plea despite the fact that he was specifically asked, in the examination-in-chief, as to what was the form / condition of the documents when these were executed by the defendants. His silence about the plea in his deposition as DW-2 is suggestive of the fact that the documents were duly filled in at the time when these were executed. A reading of these documents shows that fluctuating rate of interest was agreed to be

charged, but minimum rate of interest was agreed to be 19% per annum with six monthly rests. Therefore, the plea that the interest was not agreed to be paid at the rate of 19% per annum with six monthly rests, cannot be accepted.

33. Learned counsel representing defendant No. 4 argued that the statement of account Ext. PW-2/A was not admissible in evidence, because the plaintiff being not a bank or an institution to which Bankers' Books Evidence Act is applicable, the certified copy of the statement, in accordance with the provisions of the said Act, was not admissible in evidence. He urged that copies of the books of account, maintained by the plaintiff, had not been presented along-with the original books at the time of institution of the suit to get them certified from the authorized ministerial officer of the Court and for this reason also Ext. PW-2/A cannot be used as a piece of evidence. He urged that the suit, being based on this statement of account and the statement having not been proved as per requirement of law, is liable to be dismissed.

34. The contention of the learned counsel has been noticed only to be rejected. First, the suit of the plaintiff is not based on the said statement of account but the documents, which were executed by the defendants at the time of raising the loan. Secondly, the original books are required to be produced when the suit is based on the entries in the books maintained in a shop. In the present case the plaintiff's establishment is not a shop but a Company doing the business of lending money to industrial entrepreneurs. The plaintiff is not a private company but a company owned and controlled by the Government. The books maintained by it are supposed to have been kept and maintained in the regular course of its business. When PW-2, an employee of the plaintiff,

proved the statement Ext. PW-2/A through his testimony, he had with him the original account books. Under these circumstances, it cannot be said that the statement Ext. PW-2/A has not been proved as per requirement of law.

35. It was then contended that there was no evidence that the entries made in Ext. PW-2/A were correct. This argument can also not be accepted. Admittedly, the defendants have not paid back any amount of money to the plaintiff, except a sum of Rs. 4.5 lacs, which is reflected in the statement. It was not suggested to the witness, namely PW-2 Shri Rajinder Prasad Jain, who proved the statement, that the entries were not correct or the interest had not been correctly calculated and entered in the books and the statement Ext. PW-2/A or that any entry on the debit side was contrary to the terms of loan agreement.

36 The loan agreements, hypothecation deeds and the guarantee deeds prove the claim of the plaintiff.

37. As a sequel to the above discussion, the issue is found in favour of the plaintiff and against the defendants.

Relief

38. In view of the above findings, suit of the plaintiff is decreed and a decree for a sum of Rs.1,43,49,345/- with future interest at the agreed rate from the date of institution of the suit to the date of payment of the decretal amount, is passed in favour of the plaintiff and against defendants No. 1 to 4. Decree sheet be prepared accordingly.

August 11, 2006 (BC) **(Surjit Singh)**
Judge